

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.V.K.BALI
&
THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 16TH NOVEMBER 2006 / 25TH KARTHIKA 1928

WP(C).No. 22781 of 2006(K)

PETITIONER:

C.K. KUNJUMOHAMMED,
CHEENANKODE HOUSE, NALLANTHANNI P.O.,
NILAMBUR, MALAPPURAM DISTRICT.

BY ADV. SRI.ASOK M.CHERIAN

RESPONDENTS:

1. THE DIVISIONAL FOREST OFFICER,
NILAMBUR.
2. THE CHIEF CONSERVATOR OF FOREST
(NORTHERN REGION), FOREST HEAD QUARTERS,
KOZHIKODE.

ADDL. 3. THOMASKUTTY, S/O.ABRAHAM, AGED 34 YEARS,
MOOZHUKUZHAYIL HOUSE, AKAMPADAM,
ERANJIMANGAD P.O., MALAPPURAM DISTRICT

(ADDL.3RD RESPONDENT IS IMPEADED AS PER ORDER
DATED 30.9.2006 IN IA NO.12455/2006)

R3 BY ADV. SMT.DAISY THAMPI

R1 & R2 BY SPL. GOVT. PLEADER (FOREST) SMT.SUSHEELA R.BHAT

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 16/11/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 PHOTOCOPY OF THE RELEVANT LANDSCAPE

EXT.P2 TRUE COPY OF THE REPRESENTATION DATED 22.5.2006 SUBMITTED BY THE OWNERS AND RESIDENTS OF THE LAND ENCIRCLED BY NILAMBUR RESERVE FOREST AND KUTHIRAPUZHA.

EXT.P3 TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFEORE THE 1ST RESPONDENT DATED 10.8.2006

RESPONDENTS' EXHIBITS:

EXT.R3(A) TRUE COPY OF THE ENQUIRY REPORT DATED 10.5.2006.

/ TRUE COPY /

V.K. BALI, C.J. & S.SIRI JAGAN, J.

W.P.(C) No.22781 of 2006

Dated, this the 16th day of November, 2006

JUDGMENT

V.K.Bali,C.J.(Oral)

The petitioner appears to be holding a piece of land measuring 2.17 acres of land in Sy.Nos.5/5 and 6/2 of Nilambur Village which is part of 40 acres of arable land encircled by Kuthirapuzha (a tributary river of Chaliar) and Nilambur Reserve Forest. He conducts a brick manufacturing unit in the said land. It is the positive case of the petitioner that the only access to the said land from Manjeri – Nilambur Road is through a forest path way beyond the area where offices and quarters of the Forest officials are situated. The petitioner manufactured about 20 lakhs of bricks during the current season investing more than Rs.30 lakhs taken as loan from money lenders. The bricks are ready for sale from January 2006. While so, the forest officials prevented him and the other land owners in the encircled stretch of arable land to use the

ghat road abruptly and without any notice. It is the case of the petitioner that any delay in the matter by not permitting him to use the ghat road, he will suffer irreparable loss and he would be deprived of the only source of livelihood that he has. He thus seeks a writ of mandamus directing the respondents to allow him to have access to his land in Sy.Nos.5/5 and 6/2 of Nilambur Village which is part of the stretch of land encircled by the Nilambur Reserve Forest and Kuthirapuzha through the short stretch of forest path way leading to the encircled stretch of non-forest arable land.

2. It appears to this Court that the respondents were endeavouring to make a metal road in the forest for the use of the villagers and those who necessarily were to use it for their daily avocation. While so, a writ petition bearing No.23689 of 2006 came to be filed seeking to prevent the respondents from making the road through the forest area. The respondents, particularly the contesting respondents in the writ petition did not contest the claim made in the petition and the learned Government Pleader appeared and

stated that the metal road shall not be constructed any further. Not only that, the Government, she stated, is proceeding to take action against those who permitted construction of a road or started making the road. The said writ petition was disposed of by us vide order dated 10th November, 2006 in tune with the statement made by the learned Government Pleader. Thus, the position stands now is that whereas the metal road earlier sought to be made stands stopped, the respondents are not permitting the petitioner and others to use the earlier road referred to above. The petitioner is thus at cross roads. He has no means to go to his land and thus conduct the only business that he is doing. We would have further delved into the matter and given a finding that the petitioner cannot be put to such a tremendous loss, but there will be no need to enter into that exercise as in the statement filed by the second respondent it has been mentioned in paragraph 3 that one of the inhabitants is the owner of a brick kiln and every now and then he has been using the passage through the vested forest for the transportation of bricks,

etc. and that from the available records it could be seen that the Divisional Forest Officer, Nilambur has been allowing easement rights since 1988 onwards. Surely, if one is to go by the averments made in paragraph 3 of the statement, the reference to one of the inhabitants made in the said paragraph pertains to the petitioner. The petitioner has thus been using the forest pathway leading to Manjeri-Nilambur Road referred to in the petition and has claimed that the respondents had been permitting him the use of road for transportation of bricks. A right which the petitioner had right from 1988 till such time a new road came to be constructed which has now been stopped cannot be denied the said right. We thus order that the petitioner would be permitted to use the pathway leading to Manjeri-Nilambur Road even for transportation of bricks in the same way and manner as he has been permitted earlier. At this stage, Ms.Susheela R.Bhat, learned Special Government Pleader states that a road has to be constructed for which the Forest Department has sought approval of the Central Government and this order will be applicable till such time

the new road is constructed. The contention of Ms.Susheela R.Bhat has to be accepted. We thus order that the petitioner be permitted to use the old road only till such time a new road is constructed.

Writ petition is disposed of accordingly.

**V.K. BALI,
CHIEF JUSTICE.**

**S.SIRI JAGAN,
JUDGE.**

vns